

Crunch Time for Europe to Save the Iran Nuclear Deal

by Riccardo Alcaro

Last May, EU leaders invited Iranian Foreign Minister Javad Zarif to Brussels. The occasion was US President Donald Trump's decision to unilaterally cease American compliance with the Joint Comprehensive Plan of Action (JCPOA), the official name of the 2015 Iran nuclear deal, and re-impose all US sanctions on Iran.¹ Zarif did not leave empty-handed: EU member states confirmed their commitment to uphold their part of the deal – as long as Iran did the same.²

¹ White House, *Remarks by President Trump on the Joint Comprehensive Plan of Action*, 8 May 2018, <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-joint-comprehensive-plan-action>. For the full text of the JCPOA, see the US Department of State website: <https://www.state.gov/e/eb/tfs/spi/iran/jcpoa>. For more on US sanctions, see the US Department of the Treasury website: *Iran Sanctions*, <https://www.treasury.gov/resource-center/sanctions/programs/pages/iran.aspx>.

² Council of the European Union, *Foreign Affairs Council*, 28 May 2018, <http://europa.eu/!bt78xJ>.

Europe has fundamental reasons for defending the JCPOA. The collapse of the agreement would increase the risk of uncontrolled proliferation and potentially lead to a direct military confrontation between Iran and its foes in the region, namely Israel, Saudi Arabia and the US itself.

Consequently, Europe's interest in the endurance of the non-proliferation regime and the (residual) stability of the Middle East would suffer a devastating blow, as would Europe's strategic ambition to raise its foreign policy profile. France, Germany and the UK, as well as the EU High Representative (E3/EU), who contributed significantly to the process that resulted in the deal, would see over a decade of diplomatic efforts turned to dust.³

³ Riccardo Alcaro, *Europe and Iran's Nuclear Crisis. Lead Groups and EU Foreign Policy-Making*, Cham, Palgrave Macmillan, 2018.

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While the stakes for Europe are high, defending the JCPOA in the face of Washington's opposition was always going to be a tall order.

The US is technically violating the deal, as the International Atomic Energy Agency's regular reports have recorded no infringements by Iran.⁴ It is also in material breach of United Nations Security Council Resolution 2231, which incorporates the JCPOA.⁵

Yet, the US administration can still wield its immense power to bend the Europeans to its will. One way to do that has been the de-legitimisation of any interactions with Iran due to its alleged "destabilizing activities" in the region,⁶ namely Iran's development of ballistic capabilities and support to allies and proxies in Iraq, Syria, Lebanon and Yemen.

Another means is to squeeze Iran financially by way of sanctions targeting foreign companies and banks doing business in the country – so-called "secondary sanctions",⁷ a euphemism for measures with extra-territorial effects. To be effective, therefore, the Europeans should have

defended EU firms from the long arm of US regulators. Regrettably, they have thus far failed to do so.

When they met with Zarif, the E3/EU pledged, among other things, to deepen EU-Iranian economic relations, preserve Iran's ability to export hydrocarbons and maintain banking transactions.⁸

Yet, EU companies have been leaving Iran in droves for fear of US sanctions and in defiance of an EU "blocking regulation" prohibiting compliance with the extra-territorial legislation of foreign countries.⁹ European oil imports from Iran have ground to a halt, a six-month waiver of US sanctions granted to Greece and Italy notwithstanding.¹⁰ And Iranian banks have been disconnected from the financial messaging system run by Swift, a Brussels-based company (and thus under EU jurisdiction), in spite of European protests.¹¹

Not all has gone wrong, however. EU leaders have spoken of creating dollar-

⁴ See International Atomic Energy Agency (IAEA) website: *IAEA and Iran - IAEA Reports*, <https://www.iaea.org/newscenter/focus/iran/iaea-and-iran-iaea-reports>.

⁵ UN Security Council, *Resolution 2231 (2015)*, 20 July 2015, [https://undocs.org/S/RES/2231\(2015\)](https://undocs.org/S/RES/2231(2015)).

⁶ US Department of State, *After the Deal: A New Iran Strategy*, Remarks by Secretary of State Mike Pompeo at the Heritage Foundation, Washington, 21 May 2018, <https://www.state.gov/secretary/remarks/2018/05/282301.htm>.

⁷ See the OFAC Law Group website: *Iran-Related Secondary Sanctions*, <https://ofaclawyer.net/?p=841>.

⁸ European External Action Service (EEAS), *Remarks by HR/VP Mogherini at the Press Conference Following Ministerial Meetings of the EU/E3 and EU/E3 and Iran*, Bruxelles, 15 May 2018, <https://europa.eu/!CB78xu>.

⁹ Iran Watch, "How Companies Around the World are Reversing Course on Iran Business", in *Iran Watch Policy Briefs*, 5 November 2018, <https://www.iranwatch.org/node/8873>; European Commission, *Updated Blocking Statute in Support of Iran Nuclear Deal Enters Into Force*, 6 August 2018, http://europa.eu/rapid/press-release_IP-18-4805_en.htm.

¹⁰ "Italy Is the Last European Customer of Iranian Oil", in *Iran International*, 16 October 2018, <https://iranintl.com/en/node/150836>.

¹¹ "SWIFT System to Disconnect Some Iranian Banks This Weekend", in *Reuters*, 9 November 2018, <https://reut.rs/2FmUvJw>.

independent payment systems and of the need to buy oil in euros,¹² and the E3/EU have been working on a “special purpose vehicle” designed to bypass US sanctions and enable trade with Iran. After much delay, the mechanism has now been registered as the Instrument in Support of Trade Exchanges (INSTEX). Based in France, it will be run by a German official and provided with financial guarantees by the E3.¹³

The move has incensed the Trump administration. Secretary of State Mike Pompeo has vowed that the US will take all necessary measures to ensure enforcement of its own sanctions.¹⁴ His threat may well scare EU companies into avoiding sanctioned trade with Iran – thus including the import of oil – and allow INSTEX to trade only such goods as food, meds and medical equipment.

Whether this will be enough for the Iranians remains an open question. The Iranian government has long realised that compensation for the loss of the

US is an unrealistic expectation. At the same time, Iran’s patience has grown thin in the face of Europe’s repeated failures to resist US sanctions and the continuous delays in setting up the special purpose vehicle.¹⁵

To a detached analyst, Iran’s continued compliance with the JCPOA appears to be the wisest choice, as it would allow Tehran to keep the moral high ground, avoid isolation, reduce the risk of a US and/or US-Israeli strike against its nuclear programme and compel the Europeans to take concrete steps to enhance their autonomy from the US.

Yet, Iran’s nuclear calculations are not driven by geopolitics only. Politics also plays a role, and quite a relevant one. Thus far, Supreme Leader Ali Khamenei has refused to pull the rug from under President Hassan Rouhani. The president is still betting on the JCPOA, as attested to by his push to adopt Financial Action Task Force standards that would facilitate cooperation with foreign banks.¹⁶

However, with the campaign for the 2020 election of the *Majlis* (parliament) looming, the debate about the JCPOA will become increasingly agitated. Unless the deal starts delivering something to ordinary people, defence of the deal will be a losing electoral card.

¹² Krishnadev Calamur, “Germany’s Foreign Minister Just Proposed a Way to Skirt U.S. Sanctions”, in *The Atlantic*, 22 August 2018, <https://www.theatlantic.com/international/archive/2018/08/germany-us-heiko-maas/568129/>; “EU’s Juncker Wants Bigger Global Role for Euro”, in *Reuters*, 12 September 2018, <https://reut.rs/2CL4kji>.

¹³ “INSTEX: Europe Sets Up Transactions Channel with Iran”, in *Deutsche Welle*, 31 January 2019, <https://p.dw.com/p/3CToy>.

¹⁴ US Department of State, *Remarks at the United Against Nuclear Iran Summit*, Remarks by Secretary of State Mike Pompeo, New York, 25 September 2018, <https://www.state.gov/secretary/remarks/2018/09/286216.htm>; Natasha Turak, “‘Disturbed’ and ‘Disappointed’ Pompeo Slams EU Plan to Bypass Iran Sanctions”, in *CNBC*, 27 September 2018, <https://cnb.cx/2xWgQGY>.

¹⁵ Mohammad Ali Shabani, “Iran National Security Adviser Says Europe Missed Chance to Save Nuclear Deal”, in *Al-Monitor*, 9 January 2019, <http://almon.co/35ns>.

¹⁶ “Iran to Miss Opportunities If It Fails to Adopt FATF: Rouhani”, in *IFP News*, 11 December 2018, <https://ifpnews.com/?p=128026>.

Compounding the problem for the supporters of the deal is that the E3 have unwisely followed the US's lead in demanding that Iran curb its missile programme.¹⁷ The Europeans have also sanctioned a unit within Iran's Intelligence Ministry for allegedly orchestrating assassinations plots against Iranian exiles in France, Denmark and the Netherlands.¹⁸ Most recently, Germany has even banned Iran's Mahan Air from flying in and out of the country for transporting equipment and personnel to Syria.¹⁹

Taken individually, some of these measures may look sensible. In the context of the wider confrontation over the JCPOA, however, they come out as problematic and poorly thought-out, particularly with regards to timing. Retaliation against assassination plots may be warranted, but it would have been better to wait for the evidence to be presented in courts. Sanctioning Mahan Air will do no harm to Iran's efforts to assist the Syrian regime, but it will make harder for ordinary Iranians to land in Europe, as Mahan Air is one of Iran's remaining safe airlines.

If Europe wants Iran to be forthcoming towards its concerns about its ballistic

programme and regional policies, it is through the building of trust-based pragmatic dialogue, not coercion, that it may hope to achieve anything of import. The E3/EU's cold reception of a US-sponsored Middle East conference in Warsaw,²⁰ widely expected to become a platform for bashing Iran, is in this regard a rare but most welcome step.

The point is that the damage Europe would suffer from the collapse of the nuclear deal would greatly outweigh that emanating from Iran's ballistic advancements, involvement in Syria or targeting of Iranian opponents to the regime abroad. It follows that Europe cannot afford taking decisions that undermine the pursuit of its key priority, which is saving the JCPOA.

As Europe's hopes are pinned on INSTEX, its priority should be to ensure that the facility becomes operational sooner rather than later, and that it allows for trade in US-sanctioned goods as well. Enabling European imports of Iranian oil, in particular, would create a huge incentive for Iran to remain in the deal. Additional measures should follow, not precede, this over-important objective.

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¹⁷ Patrick Wintour, "Iran Missile Tests May Breach UN Resolution, France and UK Warn", in *The Guardian*, 3 December 2018, <https://gu.com/p/a4nk6>.

¹⁸ Michael Peel, "EU Backs New Sanctions on Iran", in *Financial Times*, 8 January 2019, <https://www.ft.com/content/080a8ca4-1373-11e9-a581-4ff78404524e>.

¹⁹ Tobias Buck, Michael Peel and Najmeh Bozorgmehr, "Germany Bans Iran's Mahan Air As European Backlash Grows", in *Financial Times*, 21 January 2019, <https://www.ft.com/content/34bd1dc8-1d75-11e9-b126-46fc3ad87c65>.

²⁰ Laurence Norman, "EU Nations Set to Snub Washington's Latest Anti-Iran Push", in *The Wall Street Journal*, 17 January 2019, <https://www.wsj.com/articles/eu-nations-set-to-snub-washingtons-latest-anti-iran-push-11547745315>.

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